STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

ILLINOIS POWER COMPANY	)	
	)	
	)	**DOC. NO. 01 - 0012**
	)	
APPLICATION FOR APPROVAL OF	)	
PROPOSED VEGETATION MANAGEMENT	)	**SERVED ELECTRONICALLY**
TARIFF SHEETS, ORIGINAL SHEET NO. 1.1	)	
and ORIGINAL SHEETS NOS. 17-38	)	

OBJECTION BY THE TOWN OF NORMAL, CITY OF BLOOMINGTON, CITY OF CHAMPAIGN, CITY OF URBANA, CITY OF GALESBURG, *ET AL.*, TO THE PETITION TO INTERVENE FILED BY CENTRAL ILLINOIS PUBLIC SERVICE COMPANY AND UNION ELECTRIC COMPANY

NOW COME the TOWN OF NORMAL, CITY OF BLOOMINGTON, CITY OF CHAMPAIGN, CITY OF URBANA, CITY OF GALESBURG, CITY OF O'FALLON, CITY OF EDWARDSVILLE, CITY OF KEWANEE, CITY OF KNOXVILLE, CITY OF GREENVILLE, CITY OF PINCKNEYVILLE, CITY OF EL PASO, CITY OF SPRING VALLEY, and VILLAGE OF SAVOY, each an Illinois municipality and unit of local government, by their attorneys David Lincoln Ader and Brian P. Mack of the law firm Ancel, Glink, Diamond, Bush, DiCianni & Rolek, P.C., and pursuant to 83IAC200.190(e), respectfully responds and objects to, and seek denial of, the Petition to Intervene herein filed by Central Illinois Public Service and Union Electric Company, and as grounds therefor state:

1. Central Illinois Public Service Company d/b/a AmerenCIPS ("CIPS") and Union Electric Company d/b/a AmerenUE ("UE") jointly petition to intervene in this proceeding, initiated

by a vegetation management tariff drafted, proposed and filed by the Illinois Power Company ("IP") for use only by it exclusively in its own territory alone.

2. CIPS and UE are both subsidiaries of Ameren Corporation, a public utility holding company.

3. CIPS and UE state two reasons why they should each be allowed to be intervenors. The first of these is that "the Ameren Companies are subject to extensive regulation by the Commission, including existing rules and regulations concerning reliability and tree trimming practices." On this basis, the Ameren Companies allege "a direct interest in this proceeding to review Illinois Power's proposed vegetation management tariff." (Mot. to Interv. ¶ 3.) This proceeding, however, is *not* a rule-making or regulation promulgating proceeding.

4. This proceeding is company specific, application specific, tariff and terms specific, and territory specific. The sole issue is whether a discrete tariff of a particular utility will be approved, approved as modified or disapproved for its own use within its own territory.

5. There is a separate procedural rule dealing with rule-making, a distinct process. 83IAC200.210. Commission review of the tariff by a particular company should not be confounded or confused with rule-making. Because no rules or regulations are being made, the Ameren Companies are not an object of the tariff proceeding, and cannot claim to have a direct interest as a subject of regulation as they allege.

6. Each petitioning Ameren Company will have its own opportunity to have its own tariff, drawn as it would draw it, reviewed by this Commission on its own merits and based on its own individual circumstances should it ever propose one. To date, these Ameren Companies are addressing their own needs for reliability and tree trimming without a tariff. No prejudice can befall

these Ameren Companies as a result of being remitted to their own proceedings, if and when appropriate. No reasonable purpose is served by their intervention in IP's tariff proceeding.

7. IP, the many intervening municipalities located with IP's service territory and other intervenors resident within IP's service territory are exposed to prejudice if the particular terms of the IP tariff and the particular and peculiar physical, historical and other circumstances that relate to IP and its past, present and proposed practices are obscured or confused with, confounded with or distracted by facts, circumstances and terms relating to other utilities and their distinct service territories. CIPS' and UE's intervention would be inconsistent with the quasi-judicial method of consideration applied. Each utility's individual proceeding is governed by the facts shown by the evidence in its own record in regard to its own tariff application. 220 ILCS 5/10-201(c). *C.f., Central Ill. Pub. Serv. Co. v. Illinois Commerce Comm'n,* 5 Ill.2d 195, 125 N.E.2d 269, 275 (1955); *Citizens Utility Bd. v. Illinois Commerce Comm'n,* 276 Ill. App. 3d 730, 658 N.E.2d 1194, 1201 (1995).

8. With CIPS' and UE's joint petition, every major electric utility in Illinois is asking to intervene in this one discrete tariff proceeding. This is inconsistent with the quasi-judicial method, and the scheduling and time limits imposed in this individual tariff review by the Commission. One obvious prejudice to the intervening municipalities and other intervenors is that the evidence and briefs that must be considered and perhaps responded to are multiplied and make adequate response within the time periods, that were set before the full extent of interventions were known, difficult and less than satisfactory. This difficulty is compounded to the extent that other utilities file their evidence at the same time as the intervening municipalities, thus making response cumbersome and the short reply time provided insufficient.

9. A rule-making proceeding has no arbitrary "drop dead" date for consideration and would be better designed to the purpose. If this proceeding is viewed as setting the pattern for all regulated electric utilities within Illinois, it should be forthrightly acknowledged and treated as such according to appropriate rule-making processes. At present, this is not the understanding of the pending proceeding.

10. The Commission is a legislative body. *C.f., Peoples Gas Light & Coke Co. v. Slattery,* 373 Ill. 31, 25 N.E.2d 482, 490, 491, 495 (1946). In the legislative realm there is no doctrine of *res judicata* or collateral estoppel, and the Commission can decide different matters differently. *United Cities Gas Co. v. Illinois Commerce Comm'n,* 163 Ill. 2d 1, 643 N.E.2d 719, 729 (1994); *Mississippi River Fuel Corp. v. Illinois Commerce Comm'n,* 1 Ill.2d 509, 116 N.E.2d 394, 396-97 (1953); *Lakehead Pipeline Co. v. Illinois Commerce Comm'n,* 296 Ill. App. 3d 942, 696 N.E.2d 345, (1998). (Even in the judicial branch, different facts and postures make for different decisions.) There is no necessary spillover from one matter to another in legislative bodies, such as the Commission, and conjecture and speculation are insufficient to support intervention. *In re Appointment of Special State's Attorneys,* 42 Ill. App. 3d 176, 356 N.E.2d 195, 198 (1976); *Soyland Power Coop v. Illinois Power Co.,* 213 Ill. App. 3d 916, 572 N.E.2d 462, 464, 465 (1991).

11. If this is to be considered a surrogate for a rule making proceeding which will predetermine the Commission's review and response of vegetation management tariffs of other regulated electric utilities, state and federal due process notice to property owners, utility customers, the full extent of municipalities and other would be intervenors located and/or interested in the tariffs of these other regulated electric utilities that this is the purpose and effect of this discrete tariff proceeding is lacking and effective participation therein denied them.

12. The second reason stated for intervention by the Ameren Companies is that they are interconnected with the electrical system of IP. The power grid of the nation has a series of company interconnections. If mere interconnection with the IP system at some point(s) gives a basis for intervention, there is virtually no end to the companies nationally that can intervene in this proceeding regardless of what states they serve, not to mention their customers and other related individuals and entities. There is no natural cut-off point. As it is, the previous intervention of Commonwealth Edison has led to a petition to intervene by the City of Chicago, and other municipalities in Commonwealth Edison's service territory may yet petition to intervene. The previous intervention of CILCO raised the interest of the City of Peoria in intervening.

13. The number of intervenors distracts this proceeding from its narrow focus, makes the proceeding unwieldy and, due to the timing of evidence and briefs, exposes the intervenor municipalities and others to prejudicial effects. CIPS' and UE's professed interests are too attenuated and remote to be appropriate for intervention. *C.f.: In re Marriage of Potts*, 297 Ill. App. 3d 110, 696 N.E.2d 1263, 1266 (1998); *People ex rel. Collins v. Burton*, 282 Ill. App. 3d 649, 668 N.E.2d 1185, 1187 (1996). A mere general interest in a proceeding is insufficient for intervention. *People ex rel. Collins v. Burton*, 282 Ill. App. 3d 649, 668 N.E.2d 1185, 1187 (1996); *Soyland Power Coop v. Illinois Power Co.*, 213 Ill. App. 3d, 916, 572 N.E.2d 462, 464 (1991); *In re Marriage of Perkinson*, 147 Ill. App. 3d 692, 498 N.E.2d 319, 323 (1986).

14. It should be self-evident that one who must obtain permission to intervene is without right to intervene. A Commission tariff proceeding is not a "come one, come all" proceeding. If it were, the requirement that one seek leave first would be meaningless. No requirement should be made meaningless.

15. Furthermore, CIPS and UE do not show that IP does not represent the same interest in service as the "interconnected" Ameren Companies would and will not be as effective in its representation of those interests as the "interconnect" Ameren Companies would. The conclusory statement that "Ameren Companies have a unique and vital interest in the subject matter of this proceeding which cannot be represented by any other party" is unsubstantiated by any factual basis. Not only is interconnection with IP the only specified ground of interest, other than the erroneous one of rule-making, but also its statement that it has this interest by virtue of being one of the electric utilities in Illinois, belies any interest unique to the Ameren Companies or different from previous utility intervenors or IP itself.

16. All the basic purposes and principles of intervention would be contravened and undercut by permitting this intervention. It blurs the focus and sole subject of this proceeding, IP's discrete tariff within its peculiar circumstances. Efficiency is thwarted. Intervention should not be permitted; *C.f., Town of Centreville v. Deckard,* 322 Ill. App. 3d 9, 53 N.E.2d 717, 718 (1994).

CONCLUSION

The moving municipalities respectfully pray the Hearing Examiner deny the Petition to Intervene filed by CIPS and UE.

Dated this 9th day of March, 2001.

Respectfully submitted,

TOWN OF NORMAL, ILLINOIS,
CITY OF BLOOMINGTON, ILLINOIS,
CITY OF CHAMPAIGN, ILLINOIS,
CITY OF URBANA, ILLINOIS,
CITY OF GALESBURG, ILLINOIS,
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CITY OF GREENVILLE, ILLINOIS,
CITY OF EL PASO, ILLINOIS,
CITY OF SPRING VALLEY, ILLINOIS,
VILLAGE OF SAVOY, ILLINOIS,

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